

SOUTH DAKOTA

S.D. CODIFIED LAWS

Title 7. Counties

7-18A-36. Firearms regulation ordinances prohibited. No county may pass any ordinance that restricts possession, transportation, sale, transfer, ownership, manufacture or repair of firearms or ammunition or their components. Any ordinances prohibited by this section are null and void.

Title 8. Townships

8-5-13. Firearms regulation ordinances prohibited. No township may pass any ordinance that restricts possession, transportation, sale, transfer, ownership, manufacture or repair of firearms or ammunition or their components. Any ordinances prohibited by this section are null and void.

Title 9. Municipal Government

9-19-20. Firearms regulation ordinances prohibited. No municipality may pass any ordinance that restricts possession, transportation, sale, transfer, ownership, manufacture or repair of firearms or ammunition or their components. Any ordinances prohibited by this section are null and void.

Title 22. Crimes

Chapter 1. Definitions and General Provisions

22-1-1. Common-law rule of strict construction abrogated. The rule of the common law that penal statutes are to be strictly construed has no application to this title. All its criminal and penal provisions and all penal statutes are to be construed according to the fair import of their terms, with a view to effect their objects and promote justice.

22-1-2. Definition of terms. Terms used in this title mean: ...

(2) "Actor," the person who takes the active part in a transaction; ...

(4) "Antique firearm," any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured before 1899, and any replica of any firearm described in this section if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or if it uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; ...

(6) "Concealed," any firearm that is totally hidden from view. If any part of the firearm is capable of being seen, it is not concealed; ...

(8) "Controlled weapon" includes a firearm silencer, machine gun, or short shotgun, as those terms are defined in subdivisions (17), (23), and (46) of this section;

(9) "Crime of violence," any of the following crimes or an attempt to commit, or a conspiracy to commit, any of the same: murder, manslaughter, rape, criminal pedophilia, aggravated assault, riot, robbery, burglary in the first or second degree, arson, kid-napping, felony sexual contact as defined in §§ 22-22-7 and 22-22-19.1, felony child abuse as defined in § 26-10-1, or

any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device;

(10) "Dangerous weapon" or "deadly weapon," any firearm, knife or device, instrument, material or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm; ...

(13) "Destructive device,"

(a) Any bomb, grenade, explosive missile, or similar device or any launching device therefor; or

(b) Any breakable container which contains a flammable liquid with a flashpoint of one hundred and fifty degrees Fahrenheit or less and has a wick or similar device capable of being ignited;

(c) The term does not include "permissible fireworks" defined by § 34-37-5; any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device; surplus ordnance sold, loaned or given by the secretary of the army pursuant to the provisions of 10 U.S.C. §§ 4684(2), 4685, or 4686; or any other device which is an antique or is a rifle which the owner intends to use solely for sporting purposes;

(14) "Explosive," any substance, or combination of substances, that is used for the purpose of detonation and which, upon exposure to any external or internal force or condition, is capable of a relatively instantaneous release of gas and heat. The term does not include "permissible fireworks" as defined by § 34-37-5; ...

(16) "Firearm," any weapon from which a projectile or projectiles may be discharged by gunpowder. As used in this subdivision, the word "gunpowder" includes any propellant that upon oxidation emits heat and light and is commonly used in firearms cartridges;

(17) "Firearm silencer," any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any such weapon; ...

(23) "Machine gun," any firearm, whatever its size and usual designation, that automatically discharges two or more cartridges by a single function of the firing device; ...

(32) "Pistol," any firearm with a barrel less than sixteen inches in length, designed to expel a projectile or projectiles by the action of an explosive; ...

(44) "Seller," any person or employee engaged in the business of selling pistols at retail;

(45) "Short rifle," a rifle having a barrel less than sixteen inches long, or an overall length of less than twenty-six inches;

(46) "Short shotgun," a shotgun having a barrel less than eighteen inches long or an overall length of less than twenty-six inches; ...

Chapter 14. Unlawful Use of Weapons

22-14-5. Possession of firearm with altered serial number as felony - Exception. Any person who possesses any firearm on which the manufacturer's serial number has been chang-

ed, altered, removed or obliterated is guilty of a Class 6 felony.

This section does not apply to persons who have applied for a new serial number pursuant to § 23-7-43.

22-14-6. Possession of controlled weapon - Exceptions. Any person who knowingly possesses a controlled weapon is guilty of a Class 6 felony. Provided that, this section shall not apply to a person who:

(1) Is a law enforcement officer or member of the armed forces of the United States or South Dakota national guard acting in the lawful discharge of his duties;

(2) Has a valid state or federal license issued pursuant to law for such weapon or has registered such weapon with the proper state or federal authority pursuant to law;

(3) Possesses a controlled weapon briefly after having found it or taken it from an aggressor; or

(4) Possesses a controlled weapon, except a machine gun or short shotgun, under circumstances which negate any purpose or likelihood that the weapon would be used unlawfully.

22-14-9. Carrying pistol or revolver without a permit as misdemeanor. Any person, other than a law enforcement officer when acting as such, is guilty of a Class 1 misdemeanor if he:

(1) Carries a pistol or revolver, loaded or unloaded, concealed on or about his person without a permit as provided in chapter 23-7; or

(2) Carries a pistol or revolver, loaded or unloaded, concealed in any vehicle operated by him, without a permit as provided in chapter 23-7.

22-14-9.1. Person possessing concealed pistol to have physical possession of valid permit - Violation as petty offense - Charge dismissed. No person may possess a concealed pistol in accordance with chapter 23-7 or this chapter unless that person also has in his or her physical possession a valid South Dakota permit to carry a concealed pistol or a permit effective pursuant to § 23-7-7.3. A violation of this section is a petty offense. However, if within twenty-four hours of being charged with a violation of this section, the person produces a permit to carry a concealed pistol which was valid at the time of the alleged offense in the office of the officer making the demand, the charge shall be dismissed.

22-14-9.2. Holders of permits from reciprocal states subject to South Dakota laws - Violation a misdemeanor. Any person who is permitted to carry a concealed pistol in a state with which the secretary of state has entered into a reciprocity agreement pursuant to § 23-7-7.3, 22-14-9.1, 22-14-9.2, 23-7-7, 23-7-7.1, and 23-7-8 may carry a concealed pistol in this state if the permit holder carries the pistol in compliance with the laws of this state. A violation of this section is a Class 1 misdemeanor.

22-14-15. Possession of firearm by one with prior violent crime conviction as felony - Fifteen-year period. No person who has been convicted in this state or elsewhere of a crime of violence or a felony under chapter 22-42, other than pursuant to § 22-42-5 or 22-42-6, may possess or have control of a firearm. A violation of this section is a Class 6 felony. This section does not apply to any person who was last discharged from prison, jail, probation, or parole,

for a crime of violence or a felony under chapter 22-42, other than pursuant to § 22-42-5 or 22-42-6, more than fifteen years prior to the commission of the principal offense.

22-14-16. Providing firearm to person with known prior violent crime conviction as felony. Any person who knows that another person is prohibited by § 22-14-15 from possessing a firearm, and who knowingly gives, loans, or sells a firearm to that person is guilty of a Class 6 felony.

22-14-17. Antique firearms and firearms incapable of discharge exempt. This chapter does not apply to any firearm which has been permanently altered so it is incapable of being discharged.

22-14-30. Possession of firearm by one with prior drug possession conviction – Exception. No person who has been convicted of a felony pursuant to § 22-42-5 or 22-42-6 or of a felony for a crime with the same elements in another state may possess or have control of a firearm. A violation of this section is a Class 6 felony. This section does not apply to any person who was last discharged from prison, jail, probation, or parole, for a felony pursuant to § 22-42-5 or 22-42-6 more than five years prior to the commission of the principal offense.

Chapter 14A. Explosives and Destructive Devices

22-14A-4. Sale, transportation, or possession of destructive device as felony - Increased penalty for prior violent crime conviction. Any person who knowingly sells, offers for sale, transports or possesses any destructive device is guilty of a Class 4 felony. If such person has been previously convicted of a crime of violence in this state or elsewhere, he is guilty of a Class 3 felony.

22-14A-13. Unauthorized possession of substances with intent to make destructive device as felony. Any person who possesses any substance, material, or any combination of substances or materials, with the intent to make a destructive device without first obtaining a permit from the department of public safety to make such device, is guilty of a Class 5 felony.

22-14A-16. Armed forces, law enforcement agencies, and licensed sellers or users of explosives and destructive devices exempt. This chapter shall not apply to the armed forces of the United States, the national guard, any law enforcement agency or any officer, agent, employee or member thereof acting in a lawful capacity and any person possessing a valid seller's permit or user's permit from the United States federal government for explosive and destructive devices.

22-14A-21. Possession of registered or licensed destructive devices permitted. Any person may possess destructive devices that are registered with, or licensed by, the state or federal government pursuant to law.

Title 23. Law Enforcement

Chapter 7. Firearms Control

23-7-1. Definitions applicable to chapter. Terms used in this chapter, unless the context otherwise requires, mean:

- (1) "Antique firearm," a firearm as defined in subdivision 22-1-2(4);
- (2) "Concealed," a firearm as defined in subdivision 22-1-2(6);
- (3) "Crime of violence," an action as defined in subdivision 22-1-2(9);

(4) "Pistol," a firearm as defined in subdivision 22-1-2(32);

(5) "Seller," a person as defined in subdivision 22-1-2(44).

23-7-1.1. Antique or nondischargeable firearms excepted. This chapter shall not apply to antique firearms or to firearms which have been permanently altered so they are incapable of being discharged.

23-7-7. Permit to carry concealed pistol - Statewide validity - Background investigation. A permit to carry a concealed pistol shall be issued to any person by the sheriff of the county in which the applicant resides. The permit shall be valid throughout the state and shall be issued pursuant to § 23-7-7.1. Prior to issuing the permit, the sheriff shall execute a background investigation, including a criminal history check, of every applicant for the purposes of verifying the qualifications of the applicant pursuant to the requirements of § 23-7-7.1. For the purposes of this section, a background investigation is defined as a computer check of available on-line records.

23-7-7.1. Requirements for issuance of temporary permit - Time - Appeal of denial. A temporary permit to carry a concealed pistol shall be issued within five days of application to a person if the applicant:

- (1) Is eighteen years of age or older;
- (2) Has never pled guilty to, nolo contendere to, or been convicted of a felony or a crime of violence;
- (3) Is not habitually in an intoxicated or drugged condition;
- (4) Has no history of violence;
- (5) Has not been found in the previous ten years to be a "danger to others" or a "danger to self" as defined in § 27A-1-1 or is not currently adjudged mentally incompetent;
- (6) Has been a resident of the county or municipality where the application is being made for at least thirty days;
- (7) Has had no violations of chapter 23-7, 22-14, or 22-42 constituting a felony or misdemeanor or in the two five years preceding the date of application or is not currently charged under indictment or information for such an offense; and
- (8) Is a citizen of the United States or has been in the United States legally for at least two years; and
- (9) Is not a fugitive from justice.

A person denied a permit may appeal to the circuit court pursuant to chapter 1-26.

23-7-7.3. Reciprocity with other states - Conditions. The attorney general shall compare South Dakota permit issuance statutes with the permit issuance statutes in states with which reciprocity is sought or requested in order to determine whether the laws of the other state meet or exceed the requirements of this chapter for the issuance of a permit. The secretary of state may enter into reciprocity agreements with other states after the attorney general has notified the secretary of state that the other states' laws meet or exceed the provisions of this chapter.

23-7-9. Delivery of pistol to purchaser - Waiting period - Wrapped and unloaded - Violation as misdemeanor. No seller may deliver a pistol to a person who has purchased a pistol until forty-eight hours have elapsed from the time of the sale of the pistol. A person who has in his possession a valid permit to carry a concealed pistol shall be exempt from the forty-eight hour waiting period. When a pistol is delivered, the pistol shall be securely wrapped and shall be unloaded. A pistol that is securely wrapped and delivered to a purchaser pursuant to this section is not a concealed weapon under

§ 22-14-9. A violation of this section is a Class 1 misdemeanor.

23-7-10. Application for purchase of pistol - Form and contents - Distribution of copies.

At the time of purchase of a pistol, a person who does not have in his possession a valid permit to carry a concealed pistol shall complete an application to purchase a pistol. The form of the application to purchase a pistol shall be prescribed by the secretary of state. The application shall require the applicant's complete name, address, occupation, place and date of birth, physical description, the date and hour of application, a statement that the applicant has never pled guilty to, nolo contendere to, or been convicted of a crime of violence, a statement that the information on the application is true and correct, and his signature. The seller shall within six hours send by first class mail or hand deliver the completed application to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident. The duplicate shall be returned to the seller by the chief of police or sheriff and the original shall be retained by him for a period of one year.

23-7-11. Regulation does not apply to sale of pistols at wholesale. Sections 23-7-7 to 23-7-12, inclusive, do not apply to sales at wholesale.

23-7-12. False information or false evidence of identity to secure pistol or permit as felony. No person, in purchasing or otherwise securing delivery of a pistol or in applying for a permit to carry a concealed pistol, may give false information or offer false evidence of his identity. A violation of this section is a Class 6 felony.

23-7-18. Sale of pistol by retail dealer - Restrictions - Misdemeanor. No pistol shall be sold in violation of any provisions of this chapter, nor shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity. A violation of this section is a Class 1 misdemeanor.

23-7-40. Purchase of rifles and shotguns by residents of South Dakota and contiguous states - Implementation of federal provisions. The state of South Dakota herewith permits residents of contiguous states and residents of this state, not otherwise precluded by any applicable laws, to purchase, sell, trade, convey, deliver, or transport rifles, shotguns, ammunition, reloading components or firearms accessories in South Dakota and in states contiguous to South Dakota. This authorization is enacted to implement for this state the permissive firearms sales and delivery provisions in section 922 (b), (3) (A) of Public Law 90-618 of the 90th United States Congress, second session.

23-7-41. Effect of repeal of federal restrictions on purchase of firearms accessories. In the event that presently enacted federal restrictions on the purchase, sale, trade, delivery, transportation or conveyance of firearms accessories are repealed by the United States Congress or set aside by courts of competent jurisdiction, § 23-7-40 shall in no way be interpreted to prohibit or restrict the purchase, sale, trade, delivery, transportation or conveyance of shotguns, rifles, ammunition, reloading components, or firearms accessories by residents of this state or of contiguous states, or of any other states who are otherwise competent to purchase, sell, trade, deliver, transport or convey rifles, shotguns, ammunition, reloading components or firearms accessories in this state, in contiguous states or other states.

23-7-43. New serial number engraved or stamped on firearm. Upon application by an owner of a firearm, the director of the division of criminal investigation shall engrave or stamp a new serial number on any firearm on which the manufacturer's serial number has been changed, altered, removed or obliterated.

23-7-44. Possession of pistols by minors prohibited - Misdemeanor. No person under the age of eighteen years may knowingly possess a pistol. A violation of this section is a Class 1 misdemeanor.

23-7-45. Exceptions to prohibition against possession of pistols by minors. The provisions of § 23-7-44 or to a criminal prosecution brought after transfer pursuant to chapter 26-11, do not apply to any minor who has the consent of the minor's parent or guardian to possess such pistol, and:

(1) That the minor was in the presence of the minor's parent or guardian;

(2) That the minor was on premises owned or leased by the minor or the minor's parent, guardian, or immediate family member;

(3) That the minor was in the presence of a licensed or accredited gun safety instructor; or

(4) That the pistol was being used for farming, ranching, hunting, trapping, target shooting, or gun safety instruction.

23-7-46. Prohibited transfer of firearms and ammunition to juveniles - Felony. No person may sell, transfer, give, loan, furnish, or deliver a firearm or firearm ammunition to any person under the age of eighteen years if such person knows or reasonably believes that the minor recipient of the transfer intended, at the time of transfer, to use the firearm or ammunition in the commission or attempted commission of a crime of violence as defined in subdivision 22-1-2 (9). The affirmative defenses contained in chapter 23-7 do not apply to a prosecution under this section. A violation of this section is a Class 5 felony.

Title 37. Trade Regulation

Chapter 17. Sale Of Serially Numbered Appliances And Equipment

37-17-1. Sale after removal or alteration of serial number as misdemeanor or felony. Any person who knowingly sells or offers for sale any ... firearm ... or any mechanical or electrical device, appliance, contrivance, material, piece of apparatus or equipment, which is identified by a serial number placed thereon by the manufacturer, the original serial number of which has been destroyed, removed, altered, covered, or defaced, is guilty of a Class 2 misdemeanor if the value of the property is two hundred dollars or less. If the value of the property is more than two hundred dollars, such person is guilty of a Class 4 felony.

[Current through 2002 Regular Session, including 2002 S.D. Laws 102 (HB 1218) & 118 (HB 1129)]